

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL WALLACE and MARY JANE
TURNER, as co-personal representatives of the
ESTATE OF MARY L. HARRISON,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

CIVIL ACTION NO.

COMPLAINT

The Plaintiffs, Michael Wallace and Mary Jane Turner, as co-personal representatives of the Estate of Mary L. Harrison, bring this Complaint against the Internal Revenue Service (“IRS”) of the United States of America, for failure to return taxes paid or otherwise take action on the Amended United States Estate Tax Return (Form 706), filed on July 17, 2019, on behalf of the Estate.

PARTIES AND JURISDICTION

1. The Decedent, Mary L. Harrison, was a Massachusetts resident with an address of 5 Glendale Rd., Stockbridge, MA 01262.
2. Michael Wallace is a duly appointed co-personal representative of the Estate of Mary L. Harrison (the “Estate”), Berkshire Probate and Family Court Docket No. BE17P0302EA with an address of 3507 Oakwood Drive, Grapevine, TX 76051.
3. Mary Jane Turner is a duly appointed co-personal representative of the Estate with an address of 4410 Melissa Lane, Dallas, TX 75229.
4. The Defendant is the United States of America.

5. This court has jurisdiction pursuant to 28 U.S.C. § 1346 (a)(1).
6. Venue is appropriate pursuant to 28 U.S.C. § 1402.

FACTS

7. Mary L. Harrison died on March 30, 2017.
8. On or around June 14, 2018, the Estate filed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return (the “Estate Tax Return”).
9. The Estate Tax Return did not account for any charitable deductions.
10. After filing the Estate Tax Return, it was determined that the Estate was entitled to a charitable deduction in the amount of \$1,733,795.55.
11. On July 17, 2019, Allyson Holmes, on behalf of the Estate, sent an Amended Form 706 (the “Amended Estate Tax Return”) to the IRS’s Cincinnati, Ohio location via Certified Mail. A copy of the cover letter is attached as **Exhibit 1**.
12. The Amended Estate Tax Return reflected an overpayment of \$669,529.93.
13. The IRS’s Service Center Director in Covington, Kentucky, Mail Unit #401 received the Amended Estate Tax Return on July 22, 2019. A copy of the certified mail receipt is attached as **Exhibit 2**.
14. Upon information and belief, prior counsel for the Estate, Virginia Smith (“Attorney Smith”), contacted the IRS several times regarding the processing of the Amended Estate Tax Return.
15. Upon information and belief, on several occasions the IRS indicated to Attorney Smith that the Amended Estate Tax Return had been received but was still waiting to be processed.
16. In late 2020, Attorney Smith passed away.

17. In spring of 2021, Allen Falke of the law firm Mirick, O’Connell, DeMallie & Lougee, LLP (“Attorney Falke”) was retained to resolve the issues surrounding the estate taxes.

18. In July 2021, Attorney Falke spoke with a representative of the IRS named Mrs. Springfield via telephone. During that conversation, Attorney Falke learned that the IRS system indicated that the Amended Estate Tax Return has been processed but that no refund or other correspondence had been issued.

19. On multiple occasions following the July 2021 phone call, Attorney Falke attempted to contact the IRS to determine the status of the Amended Estate Tax Return. In particular:

a. on July 15, 2021, Attorney Falke sent a fax to Mrs. Springfield at the IRS seeking a status on the matter;

b. on July 26, 2021, Attorney Falke sent a fax to Mrs. Springfield at the IRS seeking a status on the matter;

c. on September 20, 2021, Attorney Falke sent a fax to Mrs. Springfield at the IRS seeking a status on the matter;

d. on October 6, 2021, Attorney Falke sent a fax to Mrs. Springfield at the IRS seeking a status on the matter;

e. on October 15, 2021, Attorney Falke sent a fax to Mrs. Springfield at the IRS seeking a status on the matter; and

f. on October 28, 2021, Attorney Falke sent a fax to Mrs. Springfield at the IRS seeking a status on the matter. Copies of Attorney Falke’s letters are attached as **Exhibit 3**.

20. Delivery notices indicate that on each occasion the faxes sent by Attorney Falke were received. Copies of the fax confirmations are attached as **Exhibit 4**.

21. To date, Attorney Falke has not received a response to any of the communications sent to Mrs. Springfield seeking the status of the Amended Estate Tax Return.

22. On October 29, 2021, Attorney Falke submitted Form 911, Request for Taxpayer Advocate Service Assistance, via facsimile, to the Taxpayer Advocate located at 15 New Sudbury Street, Room 725, Boston, MA 02203, seeking assistance in moving the estate tax matter forward. A copy of the Request for Taxpayer Advocate Service Assistance (IRS Form 911), is attached as **Exhibit 5**.

23. To date, Attorney Falke has not received any response to the Request for Taxpayer Advocate Assistance.

24. To date, the Estate still has not received the requested refund nor any communication regarding the Amended Estate Tax Return.

COUNT I
(26 U.S.C. § 7422 Recovery of Erroneously Collected Tax)

25. The Estate incorporates all of the preceding allegations as if set forth fully herein.

26. The Estate filed the Amended Estate Tax Return on July 17, 2019.

27. The Amended Estate Tax Return requested a refund of \$669,529.93, as required by 26 U.S.C. § 7422(a) as a prerequisite for filing suit.

28. More than six months have elapsed since filing the request for refund, as required by 26 U.S.C. § 6532(a)(1) as a prerequisite for filing suit.

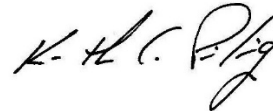
29. To date, the IRS has failed to provide the requested refund or otherwise respond to the Estate's request for refund.

WHEREFORE, the Estate respectfully requests that this Court enter judgment in its favor in the amount of \$669,529.93, plus accrued interest and litigation costs pursuant to 26 U.S.C. § 7430, and grant any other relief as the Court may deem equitable and just.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL ON ALL CLAIMS SO TRIABLE

MICHAEL WALLACE and MARY JANE
TURNER, as co-personal representatives of
the ESTATE OF MARY L. HARRISON,

By its attorney,



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Dated: April 11, 2022